

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LADDIE L. JAMES

Application 09/642,868

MAILED

MAY 14 2004

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences (BPAI) on April 6, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On April 16, 2004, appellant filed (1) "Petition and Fee for Extension of Time" and 2) "Reply Brief in Support of Appeal". The papers were matched with the file at the Board of Patent Appeals and Interferences. Both papers are to be considered by the examiner with respect to compliance with the rules. In particular, the examiner should consider the timeliness of the

Reply Brief in conjunction with the Petition and Fee for Extension of Time (37 CFR § 1.136(a)). Rule § 1.193(b)(1) states:

(b)(1) Appellant may file a reply brief to an examiner's answer or a supplemental examiner's answer within two months from the date of such examiner's answer or supplemental examiner's answer. See § 1.136(b) for extensions of time for filing a reply brief in a patent application (emphasis added)

Rule § 1.136(b) requires:

When a reply cannot be filed within the time period set forth for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute.

If the examiner finds the reply brief to be timely filed, the reply brief is to be considered for compliance with the criteria set forth in the 37 CFR 1.193(b)(1) which states:

The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief.

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Accordingly, it is

ORDERED that the application be returned to the examiner for: 1) consideration of the timeliness of the Reply Brief; 2) consideration of the Reply Brief, if necessary; 3) written notification to the appellant of the status of the Reply Brief; and 4) such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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